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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/594,057	06/25/2007	Kenji Kawai	358362011500	8885

25227 7590 09/19/2011

MORRISON & FOERSTER LLP
1650 TYSONS BOULEVARD
SUITE 400
MCLEAN, VA 22102

EXAMINER	
JACOBSON, MICHELE LYNN	
ART UNIT	**PAPER NUMBER**
1782	

NOTIFICATION DATE	DELIVERY MODE
09/19/2011	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

EOfficeVA@mofo.com
drcaldwell@mofo.com
PatentDocket@mofo.com

Advisory Action ***Before the Filing of an Appeal Brief***	**Application No.** *10/594,057*	**Applicant(s)** KAWAI ET AL.	
	Examiner Michele L. Jacobson	**Art Unit** 1782	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 06 September 2011 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☒ The period for reply expires *3* months from the mailing date of the final rejection.
   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: *1,2,4-8,10,13,14 and 16*.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:

Applicant asserts on page 3 of the remarks dated 9/6/11 fail to provide any examples of implicit or explicit support for the recitation that the substrate layer cannot be heat sealed. The temperatures at which melt extrusion and heat sealing are performed are immaterial to the fact that a material which is melt extruded can also be heated to a temperature at which a heat seal is formed. Polymers which cannot be melted (i.e. polymers which are extensively crosslinked or vulcanized) do not form heat seals. All of the polymers disclosed by applicant can be melted. Applicant's assertion on page 4 of the remarks that one of ordinary skill would presume that the substrate layer could not be heat sealable because otherwise it would "stick to a heat plate used for heat sealing" is not persuasive given that those of ordinary skill in the art are well aware that different polymeric materials form heat seals at different temperatures. Applicant's selection of a substrate layer which does not form a heat seal at the same temperature as the heat sealable layer is not evidence that the substrate layer is incapable of being heat sealed. Applicant appears to assert page 4 of the remarks that all heat seals must be made at the temperatures recited in claim 1. This assertion is inaccurate. Just because applicant's specification discloses the heat seal and substrate layers separately as asserted on page 4 of the remarks, this does not exclude the substrate layer from be capable of forming heat seals. Applicant's assertion on page 5 of the remarks that one of ordinary skill in the art would not seek to improve the strength of the laminate of Kohyama because it was already recited to be superior is not found persuasive. The Courts have made clear that the teaching, suggestion, or motivation test is flexible and an explicit suggestion to combine the prior art is not necessary. The motivation to combine may be implicit and may be found in the knowledge of one of ordinary skill in the art, or, in some cases, from the nature of the problem to be solved. DyStar Textilfarben GmbH & Co. Deutschland KG v. C.H. Patrick Co., at 1366, 80 USPQ2d at 1649 (Fed. Cir. 2006). "[A]n implicit motivation to combine exists not only when a suggestion may be gleaned from the prior art as a whole, but when the improvement is technology-independent and the combination of references results in a product or

/Rena L. Dye/
Supervisory Patent Examiner, Art Unit 1782

/M. L. J./
Examiner, Art Unit 1782